THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE JOCELYN NEWMAN
Circuit Court Judge
Fifth Judicial Circuit

Appellate Case No. 2019-002076
CASE NO: 2018-CP-400-5641

RONALD I. PAUL..Appellant,

V.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; PAUL D. DE HOLCZER, individually and as a partner of the law Firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER, in his individual capacity as, Director Rights of Way South Carolina Department of Transportation; MACIE M. GRESHAM, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; NATALIE J. MOORE, in her individual capacity as assistant chief counsel South Carolina Department of Transportation.. Respondents.

FINAL REPLY BRIEF OF APPELLANT

Ronald I. Paul
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Appellant, *Pro Se* litigant
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TABLE OF CONTENTS

TABLE OF AUTHORITIES..3

APPELLANT RESPONSE TO RESPONDENTS STATEMENT OF CASE..............6

ARGUMENTS..7

1. The Court erred in dismissing the complaint in its entirely and dismissing SCDOT as an improper party that contained a State Law claim; action for declaratory judgment under South Carolina code section 28-2-10, *et seq and* 28-2-40, Compromise or settlement permit, that included all Respondents SCDOT, Rucker, Gresham, Moore, de Holczer Quinn and Ormond..............7

2. The Court erred in ruling that, as a matter of law, that the applicable statute of limitations is three years and dismissing with prejudice..............................11

3. The Court erred in dismissing case number 2018-CP-400-5641 as a new limitations period is created with each overt act in furtherance of the civil conspiracy, and the statute of limitations begins to run on the date of the last overt act..13

4. The Court erred in granting respondent's motion to dismiss citing res judicata (claim preclusion) and collateral estoppel (issue preclusion) where the united states District Court of South Carolina dismissed the previous cases without prejudice, is inconsistent with years of United States Supreme Court and other appellate Court precedents, and therefore erroneously found that Appellant's federal claims were dismissed on the merits in federal court and not because of any correctable pleading deficiency..............................16

5. The Court erred in granting Respondent's Quinn and Ormond motion to dismiss when the complaint had stated facts to support the Sections 1983 civil conspiracy claim and that they were state actors, and compounded the error by relying upon an unpublished opinion with no precedential value....20

6. The Court erred in dismissing the Complaint with prejudice and without an opportunity to replead or amend, in this post- *Knick* world......................22

CONCLUSION..25

TABLE OF AUTHORITIES

CASES

Brown v. Elliott, 225 U.S. 392, 401 (1912)..14

Buckner v. Preferred Mut. Ins. Co. , 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970)..19

Byerly v. Connor, 307 S.C. 441, --- 415 S.E.2d 796, 798 (1992)............................12

Carolina Chloride, Inc. v. S.C. Dep't of Transp., 391 S.C. 429, 433-34, 706 S.E.2d 501, 503 (2011) (citation omitted)...24

Cooter Gell v. Hartmarx Corp., 496 U.S. 384, 396 (1990)..................................19

Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 186-187, 66 L.Ed.2d 185 (1980)..21

Erickson v. Pardus, 551 U.S. 89, 93 94 (2007)...11,13

Ex parte Young, 209 U.S. 123, 159-60, 28 S.Ct. 441,52 L.Ed. 714 (1908)............7,10

Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App. 1993)..23

Fields v. Sarasota Manatee Airport Auth., 953 F.2d 1299, 1303 (11th Cir. 1992)..15

Fiswick v. United States, 329 U.S. 211 (1946)..15

Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987)..11,15

Gomez v. Illinois State Bd. of Education, 811 F.2d 1030, 1039 (7th Cir. 1987) (citation omitted)..7,11,13

Gowin v. Altmiller, 663 F.2d 820, 822 (9th Cir.1981)...15

Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d at 159, 166 (3d Cir. 2010)..21

Greer v. McFadden , 295 S.C. 14, 17, 366 S.E.2d 263, 265 (Ct. App. 1988).............8

Harper v. Va. Dep't of Taxation, 509 U.S. 86, 95-96, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993)..24

Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct.App. 2001)....10

Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946).10

Klehr v. A. O. Smith Corp., 521 U.S. 179, 189 (1997) (citations omitted)....14

Knick v. Township of Scott, 139 S. Ct. 2162 (2119)....2,22,23,24,25

Lansdowne on the Potomac Homeowners Ass'n v. OpenBand at Lansdowne, LLC 713 F.3d 187 slip op. at 9-14 (4th Cir. Apr, 5 2013)....19

Loved Ones in Home Care, LLC v. Toor, 2019 WL 2708459, *3 (S.D. W.Va. 2019)..20

Lucero v. State 777 S.E.2d 409 (S.C. Ct. App. 2015)....24

Mann v. Haigh, 120 F.3d 34, 36 (4th Cir. 1997)....19

Marcantoni v. Bealefeld, 734 Fed. Appx. 198, 199 (4th Cir. 2018)....20

Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980)....21

Mason v. Department of Justice, 39 Fed. Appx. 205, 207 (6th Cir. 2002)....20

McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1085)....10

McKesson & Robbins, 206 S.C. 269, 33 S.E.2d 585 (1945)....14

McLean v. International Harvester Co., 817 F.2d 1214, 1220, n.8 12 (5th Cir. 1987)....14

Miranda C. v. Nissan Motor Co., 402 S.C. 577, 586, 741 S.E.2d 34, 39 (Ct.App.2013)....24

Nalle v. Oyster, 230 U.S. 165, 183 (1913)....14

Norton v. Norfolk Southern Railway Co., 350 S.C. 473, 567 S.E.2d 851, 853 (2002)....8,20,23

Pakdel v. City & Cty. of San Francisco, 952 F.3d 1157, 1163 (9th Cir. 2020)....22

Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)....10

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002)....14

Riley v. Dorton 93 F.3d 113 (4th Cir. 1996)....23

Semtek International Inc. v. Lockheed Martin Corp.,531 U.S. at 505....19

Skydive Myrtle Beach, Inc. v. Horry Cnty. 426 S.C. 175 (S.C. 2019) • 826 S.E.2d 585 (Decided Mar 13, 2019)....25

Thomas v. Tennessee, 451 F.Supp.3d (W.D. Tenn. 2020)....22

Thompson v. California Fair Plan Assn., 221 Cal.App.3d 760, 270 Cal.Rptr. 590 (1990)....14

Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984)....21

United States v. Butler, 792 F.2d 1528 (11th Cir. 1986)....15

United States v. Craft, 105 F.3d 1123 (6th Cir. 1997)....14

United States v. Davis, 533 F.2d 921, 926 (5th Cir. 1976....14

United States v. Head, 641 F.2d 174, 177 (4th Cir. 1981)....14

Venegas v. Wagner, 704 F.2d 1144, 1145 (9th Cir.1983)....15

Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue, 358 S.C. 647,650,595 S.E.2d 890, 892 (Ct. App. 2004)....23

Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)....14

Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 176, 194, 196-97. (1985)....14,15,17,18,22,23

UNITED STATES CONSTITUTION

Fourteenth Amendment rights Just Compensation/Taking Clause....15,18,21

Fifth Amendment rights Just Compensation/Taking Clause....10,15,18,21

STATUTES

Federal Statute

Federal statute 18 U.S.C. § 371....15

Federal statute 28 U.S.C. § 2201....7

Federal statute 28 U.S.C. § 2202....7

Federal statute 42 U.S.C. § 1983....2,8,12,15,16,17,18,20,21,22

State Statute

South Carolina S.C. Code section 15-3-520(b)....12,13,24

South Carolina S.C. Code section 15-3-530(1)....12,24

South Carolina S.C. Code section 15-3-530(5)....12,24

South Carolina S.C. Code section 15-3-545....12

South Carolina S.C. Code section 15-53-10....8,9

South Carolina S.C. Code section 28-2-10, *et seq*....2,7,8,9,13

South Carolina S.C. Code section 28-2-40....2,7,8,9

RULES

Federal Rules of Civil Procedure Rule 57....7,8

South Carolina Appellate Court Rule 220(a)....20,22,23

South Carolina Rule of Professional Conduct 407 3.3 (a) (2)....23

South Carolina Rule on evidence 201 (b)....12

South Carolina Rules of Civil Procedure, Rule 12(b)(6)....7,11,13

South Carolina Rules of Civil Procedure, Rule 57....8,9

OTHER

Black's Law Dictionary (7th ed. 1999)....19

20 American Jurisprudence 2d *Courts* § 150 (2013)....24

APPELLANT RESPONSE TO RESPONDENT'S STATEMENT OF THE CASE

Appellant objects to Respondents' Statement of the Case to the extent it includes factual inaccuracies, contested factual matter and arguments. (R 440 lines 7-10, 55-57, 437 lines 5-25 then go to 330-391)

ARGUMENTS

I The Court erred in dismissing the complaint in its entirely and dismissing SCDOT as an improper party that contained a State Law claim ; action for declaratory judgment under South Carolina code section 28-2-10, *et seq and* 28-2-40, Compromise or settlement permit, that included all Respondents SCDOT, Rucker, Gresham, Moore, de Holczer Quinn and Ormond.

In Respondents brief, on pages 7-8 the Respondents cannot, in presenting its 12(b)(6) challenge, attempt to refute the complaint or to present a different set of allegations. The attack is on the sufficiency of the complaint, and the defendant cannot set or alter the terms of the dispute, but must demonstrate that the plaintiff's claim, as set forth by the complaint, is without legal consequence *Gomez v. Illinois State Bd. of Education*, 811 F.2d 1030, 1039 (7th Cir. 1987) (citation omitted). Additionally, "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)

Appellant respectfully renews his arguments; Appellant brought a declaratory judgment action against SCDOT and all the other Respondents seeking, *inter alia*, a declaration. (R 55) On pages 24-25, paragraphs 101-106 Appellant identify the federal Declaratory Judgment Act, 28 U.S.C. § 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.[1] (R 55-56) *Ex parte Young*, 209 U.S. 123, 155-56 (1908)

As a basis for the relief sought, the power to issue a declaratory judgment pursuant to those statutes and rule are discretionary, as the declaratory relief sought would —in and of itself—serve a useful purpose in clarifying the parties'

[1] The district court had declined to exercise supplemental jurisdiction over the state law claim, dismissing it without prejudice. (R 432 lines 17-25, 433 lines 1-7, 183)

legal relations.[2] (R 55, 434 lines 7-25, 435 lines 1-25, 436 lines 1-25)

The declaratory relief sought was—in fact—a State Law claim or action under South Carolina code section 28-2-10, *et seq and* 28-2-40 Compromise or settlement permit; South Carolina code section 15-53-10, *et seq* and Rule 57 of the South Carolina Rules of Civil Procedure.[3] (R 55, 432 lines 17-25, 433 1-7)

THE COURT: Why did you choose to do that?

(R 432 line 17)

> MR. PAUL: Your Honor, when I was filing in Federal Court, Judge Curry had -- wouldn't take concurrent jurisdiction and it's in one of her orders. She refused to take concurrent jurisdiction over the settlement agreement. She called it a "contract-based claim," that, you know, from my understanding, that you need -- to settle that in State Court. I'm not -- I'm not going to deal with the settlement agreement. You need to deal with that in State Court; but she didn't say them [sic] exact words, but she put it in her order say that it's a contract State based claim and she refused to take concurrent jurisdiction.
>
> She -- she didn't use them [sic] exact words, but basically, that's what she said. And that's why I'm here in the State Court.

(R 432 lines 18-25, 433 lines 1-7)

Therefore, in case 4800 (2002-CP-400-4800 Eminent Domain case hereinafter referred to as "case 4800"). On or about February - March 23, 2004 Quinn, Buckles, SCDOT, Rucker, Gresham, Moore and de Holczer agreed to a settlement between them. (R 266, 305 lines 13-15)

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[2] Even though this action is substantively brought under federal law, namely 42 U.S.C 1983 civil conspiracy, the procedural aspects of the case are governed by the South Carolina Rules of Civil Procedure *See, Norton v. Norfolk Southern Railway Co.,* 350 S.C. 473, 567 S.E.2d 851, 853 (2002) (federal claim brought in state court " is controlled by federal substantive law and state procedural law") Therefore, SCRCP 57, is applicable to this case. This is the same as the language of Federal Rule 57 except that the appropriate State Code references are substituted for the Federal statute.

[3] Greer v. McFadden , 295 S.C. 14, 17, 366 S.E.2d 263, 265 (Ct. App. 1988) (holding even if a pro se claim is not framed with expert precision, where the point is clear, the issue should be addressed)

In that all Respondents, including Ormond took a position claiming and declaring case 4800 had settled for just compensation. This was an intentionally false statement, because all Respondents knew without Paul's consent or approval, as a matter of law, Respondents could not settle the case for just compensation. (R 55-59, 434 lines 7-25, 435 lines 1-25, 435 lines 1-25)

Now, as set forth above, there exists an actual controversy between Appellant and Respondents as to whether the settlement agreement in case 4800 between SCDOT and the Buckles applied equally to Paul, as just compensation. (R 55, 305)

Therefore, Appellant seek declaratory relief and a judicial determination pursuant to: (R 55-56, 305 lines 13-21)

Section 28-2-10, *et seq and* 28-2-40. Compromise or settlement permit. At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief and, South Carolina code section 15-53-10, *et seq* and Rule 57 of the South Carolina Rules of Civil Procedure:

(a) That Respondents are prohibited / barred from enforcing the settlement agreement between SCDOT and the Buckles as payment of just compensation against or/ to Paul, because the evidence shows Paul never agree to any settlement;

(b) That Respondents are prohibited / barred for all time enforcement of the settlement agreement between SCDOT and Buckles as payment of just compensation against or/ to Paul, because Paul was not a party to any settlement negotiations;

(c) That Respondents are prohibited / barred for all time enforcement of the settlement agreement between SCDOT and Buckles as payment of just compensation against or/ to Paul, because Paul did not sign the consent order to settle the case;

(d) That Respondents are prohibited / barred for all time enforcement of the settlement agreement between SCDOT and Buckles as payment of just

compensation against or/ to Paul, because the settlement did not include an appraisal of Paul property (highest and best use).

"In South Carolina jurisprudence, settlement agreements are viewed as contracts." Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct.App. 2001); Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)

Because of the foregoing Paul has suffered a denial of its Constitutional rights, the right to payment for taking of his property as otherwise allowed in accordance with the Takings Clause of the Fifth Amendment, *in other words to be clearly, zero $0.00. dollars and cents,* (248-249) and the resultant financial damages approximating $310,000.00. (R 56-57)

The Court concluded that the "Defendant SCDOT is not a "person" or proper party not just for money damages claims but also for claims seeking injunctive or prospective relief. Thus, the Defendant SCDOT is dismissed on this additional basis". (R 25) However, count one for declaratory judgment, is a State Law claim or action that includes SCDOT to resolve an actual controversy. (R 55, 434 line 7- p 436 line 25) See McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985)

Lastly, in count one, Respondents statute of limitations argument is without merit, as "statutes of limitations are not controlling measures of equitable relief." Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946) In count one, equitable relief is all that Appellant has sought. (R 55 #105 (a) (b), 56 (c) (d) *Ex parte Young*, 209 U.S. 123, 159-60, 28 S.Ct. 441,52 L.Ed. 714 (1908)

II. The Court erred in ruling that, as a matter of law, that the applicable statute of limitations is three years and dismissing the complaint with prejudice.

In Respondents brief, on page 8, 9 Respondents cannot, in presenting its 12(b)(6) challenge, attempt to refute the complaint or to present a different set of allegations.[4] The attack is on the sufficiency of the complaint, and the defendant cannot set or alter the terms of the dispute, but must demonstrate that the plaintiff's claim, as set forth by the complaint, is without legal consequence *Gomez v. Illinois State Bd. of Education*, 811 F.2d 1030, 1039 (7th Cir. 1987) (citation omitted).

Sealed Instrument

Appellant respectfully renews his arguments; On August 8, 2019, Appellant argued in his motion and before the Court that the applicable statute of limitations is twenty years. S.C. Code Ann. § 15-3-520(b), which provides for a twenty-year statute of limitations for an action upon a sealed instrument. (R 205) When questioned by the Court:

> THE COURT: if Federal law determines it, then why'd you just tell me about South Carolina Code 15-5-520 because that's a State law. So, if your argument is that the Federal law is what determines the statute of limitations, why is 15-5-520 important at all?
>
> (R 422 lines 9-13)

> MR. PAUL: Well, State law -- Federal law bar(borrow) the State law statute of limitation.
>
> (R 422 lines 14-17)

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4 "because the original condemnation action in 2002 involved property on which he had a commercial lease, *which he claims -- without proof -- was a sealed instrument*". """ Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citations omitted). A plaintiff is not required to plead his evidence......... in advance of discovery. " Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987).

Appellant argued a section 1983 action borrow the State law statute of limitation for personal injury actions. Under South Carolina law, the statute of limitations for a personal injury claim is three years. *See*, S.C. Code Ann. § 15-3-530(5) "an action for assault, battery, or any injury to the person or rights of another, ***not arising on contract*** and not enumerated by law, and those provided for in Section 15-3-545))".

In this matter, the particular facts of the case would lead to an expansion of Paul's rights, not diminution. Because Paul commercial lease, a sealed instrument "***arising on contract***" was a required part of the eminent domain transaction in case 4800 selling, buying, and transferring property. The Court overlooked the language of section 15-3-530 (5) that expanded the statute, that S.C. Code section 15-3-530 (1) and 15-3-520(b) applies within, and therefore is an arm of S.C. Code section 15-3-530 (5).

> Then go to Richland County Register of Deeds, Record Book 00593-1478 and Renewal Record Book 00868-2723 pursuant to judicial notice of this fact as records of the Richland County Register of Deeds are "generally known within the territorial jurisdiction of the trial court" and the "accuracy of which cannot be reasonably questioned." S.C. R. Evid. 201 (b)and further notes case law (Byerly v. Connor, 307 S.C. 441, --- 415 S.E.2d 796, 798 (1992).
>
> ("In the state of South Carolina, "when land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee." Byerly v. Connor, 307 S.C. 441, --- 415 S.E.2d 796, 798 (1992).")

On October 21, 2002, when SCDOT, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore and Paul D. de Holczer filed an Amended Condemnation Notice against Paul, as a matter of law, pursuant to the Eminent Domain Procedure Act,

S.C. Code Ann. §28-2-10, *et seq.*, they inherited Paul's commercial lease a sealed instrument. (R 37-38)

On or about October 28, 2003, the state official terminated Paul's commercial lease a sealed instrument, without payment of just compensation to Paul, *in other words to be clearly, zero $0.00. dollars and cents.* (R 39, 248-249)

According to the four corners of the Complaint, in this case, the statute of limitations is 20 years upon a sealed instrument (Paul Commercial Lease) S.C. Code section 15-3-520 (b). In this case, the order applies the wrong statute.

III. The Court erred in dismissing case number 2018-CP-400-5641 as a new limitations period is created with each overt act in furtherance of the conspiracy, and the statute of limitations begins to run on the date of the last overt act.

In Respondents brief, on page 10 the Respondents cannot, in presenting its 12(b)(6) challenge, attempt to refute the complaint or to present a different set of allegations. [5] The attack is on the sufficiency of the complaint, and the defendant cannot set or alter the terms of the dispute, but must demonstrate that the plaintiff's claim, as set forth by the complaint, is without legal consequence Gomez v. Illinois State Bd. of Education, 811 F.2d 1030, 1039 (7th Cir. 1987) (citation omitted). Additionally, "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007)

[5] "That is a reference to filings made in the last of the federal lawsuits, specifically Civil Action Number 3:16-1727-CMC-PGJ".

Next, in Respondents brief, on pages 10, 11, 12 and footnote 3 respondents contended the foregoing authorities[6] recognize that arguments made in defense of litigation, including the filing of pleadings that deny the occurrence of a conspiracy, are privileged and thus cannot constitute the "overt act" giving rise to the conspiracy. South Carolina law also recognizes that the filing of court pleadings is absolutely privileged. See, Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002); McKesson & Robbins, 206 S.C. 269, 33 S.E.2d 585 (1945).[7]

Appellant respectfully renews his arguments; Appellant argued, the statute of limitations for conspiracy "runs from the last overt act during the existence of the conspiracy. (R 422-423)" Fistwick v. United States, 329 U.S. 211, 216 (1946) (citing Brown v. Elliott, 225 U.S. 392, 401 (1912); Klehr v. A. O. Smith Corp., 521 U.S. 179, 189 (1997) (citations omitted); United States v. Head, 641 F.2d 174, 177 (4th Cir. 1981) (citing United States v. Davis, 533 F.2d 921, 926 (5th Cir. 1976).

It is unclear when the Court determined the statute of limitation began to run but ruled "all claims arising prior to October 26, 2015[8] are time-barred". (R 21)

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[6] Thompson v. California Fair Plan Assn., 221 Cal.App.3d 760, 270 Cal.Rptr. 590 (1990); Nalle v. Oyster, 230 U.S. 165, 183 (1913); United States v. Craft, 105 F.3d 1123 (6th Cir. 1997); McLean v. International Harvester Co., 817 F.2d 1214, 1220, n.8 12 (5th Cir. 1987); Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002); and McKesson & Robbins, 206 S.C. 269, 33 S.E.2d 585 (1945).'

[7] This argument is improperly raised for the first time on appeal. Moreover, could not be raise on Respondents motion to dismiss. As of today, Respondents have not filed answers to the Appellant's Complaint to this action. Because this argument was never made in the trial court, it cannot be made for the first time on appeal. See, Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("it is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review").

[8] Appellant had argued under Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 176 (1985). The United States Supreme Court held that a property owner's takings claim is not ripe for consideration in federal court until the property owner has pursued any available state court remedies that might lead to just compensation. 473 U.S. at 194. Williamson County required a federal court plaintiffs to pursue any available

Therefore, appellant argued, this is a 42 USC 1983 civil conspiracy case filed in state court, at this time or point federal law applies. Under Federal Law, State law does not apply to the time of accrual in federal causes of actions. *See* *Gibson v. United States* 781 F.2d 1334 (9th Cir. 1986) ... rejecting plaintiffs reliance on state law regarding the running of the statute of limitations in a civil conspiracy under 42 U.S.C. 1983. Stating..."while state law prescribes the statute of limitation applicable to section 1983 claims, federal law governs the time of accrual." *Citing* *Venegas v. Wagner*, 704 F.2d 1144, 1145 (9th Cir.1983); *Gowin v. Altmiller*, 663 F.2d 820, 822 (9th Cir.1981)");"*Gibson v. United States* 781 F.2d 1334 (9th Cir. 1986)

Under Federal Law, while the conspiracy exists, the statute of limitations does not commence to run until the "cessation of the wrongful acts committed in furtherance of the conspiracy. Conspiracy is a continuing offense. For statutes such as 18 U.S.C. § 371, which require an overt act in furtherance of the conspiracy, the statute of limitations begins to run on the date of the last overt act. *See* *Fiswick v. United States*, 329 U.S. 211 (1946); *United States v. Butler*, 792 F.2d 1528 (11th Cir. 1986).

An overt act is an independent act that comes after the agreement or conspiracy and is performed to affect the objective of the conspiracy. The overt act "within itself" is not a cause of action under 1983 conspiracy claim; its sole function is to demonstrate that the conspiracy is operative and or continuing.

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state court remedies that might lead to just compensation before bringing suit in federal court under section 1983 for claims arising under the Fourteenth and Fifth Amendments for the taking of property without just compensation. *Fields v. Sarasota Manatee Airport Auth.*, 953 F.2d 1299, 1303 (11th Cir. 1992); *Williamson County*, 473 U.S. at 196-97. (R 425 lines 24-25, 426 lines 1-20, 441 lines 6-13)

Appellant argued overt acts after October 26, 2015: According to the four corners of the Complaint. The Complaint in this case was filed on October 26, 2018, the last overt act before the Complaint was filed was on April 19, 2016,[9] therefore, according to the four corners of the Complaint, on page 18 (R 49) the statute of limitations in this civil conspiracy case under 42 U.S.C. 1983 started to run / accrual on April 20, 2016, ***Respondents have not filed answers.*** (R 261-262, 265)

Appellant argued overt acts after October 26, 2015: According to the four corners of the Complaint on page 18 (R 49) the civil conspiracy continues to the day through cover-ups, defenses and tactics, ***Respondents have not filed answers.*** One example: Is on April 16, 2019, see Plaintiff's first amendment to Plaintiff's combined memorandum in opposition to all defendants' motions to dismiss and/or motion for summary judgment filed on August 5, 2019 page two. (R 255-279, 424)

IV. The court erred in granting Respondent's motion to dismiss citing res judicata (claim preclusion) and collateral estoppel (issue preclusion) where the United States District Court of South Carolina dismissed the previous cases without prejudice, is inconsistent with years of United States Supreme Court and other appellate Court precedents, and therefore erroneously found that Appellant's federal claims were dismissed on the merits in federal court and not because of any correctable pleading deficiency.

In Respondents brief, on pages 13 and 14 it looks as if respondents are arguing the Circuit Court based its res judicata (claim preclusion) and collateral estoppel (issue preclusion) ruling on the 2008 *state court* action which was

[9] Specific intent is when a person acts with knowledge of what he/she is doing and with the objective of completing some. Examples: Rental of a van, purchase of explosives, obtaining a map of downtown New York City and going back and forth to the World Trade Center, could each be considered overt acts as part of the terrorist bombing of that building.

dismissed by Judge Strickland with prejudice, *not the federal court actions that were dismissed by Judge Currie without prejudice.*(R 427 lines 14-25) Then Respondents argues unreasonably that Appellant fails to challenge the 2008 *state court* action which was dismissed by Judge Strickland with prejudice. Despite, Appellant appealed the Judge's primary ruling, res judicata, claim preclusion, collateral estoppel and issue preclusion, (R 22) in other words, the 2008 state court action only explained the Circuit Court ruling on res judicata, claim preclusion, collateral estoppel and issue preclusion, (R 22-24) that was clearly appealed.

The 2008 state court action was a civil conspiracy under state law, the federal court actions was under federal law 42 U.S.C. 1983 civil conspiracy for violation of the Just Compensation Clause. The 2008 state court case was clearly **not the same** and **outside of the four corners of the Complaint** in this case. (R 291, 151-153) Under Federal Law, pursuant to *Williamson County* the 2008 state court case raised by the Respondents were required under federal law, *Williamson County* demonstrate that the Plaintiff did not have a cause of action for violation of the Just Compensation Clause until he first litigated in state court. **In other words, how can res judicata, collateral estoppels, issue preclusion and claim preclusion bar a cause of action that did not exist in 2008.** (R 425 lines 24-25, 426 lines1-20, 441 lines 6-13) Because at the time, under federal law in effect at that time, his "Takings" claim was not ripe because *Williamson County* (recognizing that "a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation . . .").

Williamson required a federal takings litigant first to litigate in state court. (R 288-289)

Appellant respectfully renews his arguments; After, pursuing and exhausting all available State court remedies, that included the 2008 state court case. (R 152) On April 17, 2012, Appellant Filed a 42 U.S.C. 1983 civil rights lawsuit in the U.S. District Court of Columbia South Carolina against the same Respondents. (R 218 ECF #1) *Williamson County* required a federal court plaintiff to pursue any available state court remedies that might lead to just compensation before bringing suit in federal court under section 1983 for claims arising under the Fourteenth and Fifth Amendments for the taking of property without just compensation.

The Summons were issued on May 15, 2012 by the district court and served on all Respondents on or about May 25, 2012. (R 218-219)

On or about June 10, 2012, all Respondents filed motions to dismiss (R 219-221) that included the 2008 state court action for civil conspiracy under state law (R 219 ECF 18 #9) and the state officials also filed an answer. (R 220 ECF 25)

The 42 U.S.C. 1983 civil rights lawsuits were dismissed without prejudice, that clearly included the 2008 state court case. (R 79 #5) then go to (R 152) **RESPONDENTS FILE NO APPEAL.** (R 427-428) Now, in this case Respondents attempt to rely upon the defenses of res judicata, collateral estoppels, issue preclusion, claim preclusion. Notwithstanding, that when the district Court issued its Order dismissing Appellant Complaint without prejudice, **Respondents failed**

to file an appeal.[10] (R 427-428) *See* Semtek International Inc. v. Lockheed Martin Corp., 531 U.S. at 505 ("The primary meaning of 'dismissal without prejudice' . . . is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim."); see also Lansdowne on the Potomac Homeowners Ass'n v. OpenBand at Lansdowne, LLC 713 F.3d 187 slip op. at 9-14 (4th Cir. Apr, 5 2013); A dismissal without prejudice for failure to state a claim is not an adjudication on the merits, *Mann v. Haigh,* 120 F.3d 34, 36 (4th Cir. 1997); citing Cooter Gell v. Hartmarx Corp., 496 U.S. 384, 396 (1990) ("`[D]ismissal . . . without prejudice' is a dismissal that does not `operat[e] as an adjudication upon the merits,' and thus does not have a res judicata effect.") Therefore, a dismissal without prejudice makes it unnecessary for the court in which the subsequent action is brought to determine whether that action is based on the same cause as the prior action.

Black's Law Dictionary (7th ed. 1999) defines "dismissed without prejudice" as "removed from the court's docket in such a way that the plaintiff may refile the same suit on the same claim," . . . and defines "dismissal without prejudice" as "[a] dismissal that does not bar the plaintiff from refiling the lawsuit,"......... . .

Lastly, it is "well settled law" that when a case is dismissed but the Appellant is allowed to bring a new lawsuit on the same claim it is dismissed without prejudice. It is a dismissal that does not bar the Appellant from bringing a new

---

10 *Buckner v. Preferred Mut. Ins.* Co. , 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970) (holding an unappealed ruling, right or wrong, is the law of the case).

lawsuit on the same claim. Dismissal without prejudice is based upon procedural errors.

All Respondents are arguing against years of United States Supreme Court, South Carolina Supreme Court, and other Appellate Court precedents.

V. The court erred in granting Respondent's Quinn and Ormond motion to dismiss when the complaint had stated facts to support the sections 1983 civil conspiracy claim and that they were state actors and compounded the error by relying upon an unpublished opinion with no precedential value.

In Respondents brief, on pages 15-16, Quinn and Ormond relies on three unpublished opinion of *Marcantoni v. Bealefeld*, 734 Fed. Appx. 198, 199 (4th Cir. 2018); *Loved Ones in Home Care, LLC v. Toor*, 2019 WL 2708459, *3 (S.D. W.Va. 2019); and *Mason v. Department of Justice*, 39 Fed. Appx. 205, 207 (6th Cir. 2002) These three unpublished opinion are clearly distinguishable from Paul's case. Moreover, because these cases are an unpublished opinion, they have no precedential value, pursuant to Rule 220(a) SCACR. Even though this action is substantively brought under federal law, namely 42 U.S.C 1983 civil conspiracy, the procedural aspects of the case are governed by the South Carolina Appellate Court Rules *See, Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 567 S.E.2d 851, 853 (2002) (federal claim brought in state court "is controlled by federal substantive law and state procedural law") Therefore, SCACR 220(a), is applicable to this case.

Appellant respectfully renews his arguments; According to the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for the Respondents Quinn and Ormond violating Appellant's rights while acting under

color of state law; and on page 5 paragraph 17 Respondent Quinn is sued as a State Actor and individually; and on page 5 paragraph 19 Respondent Ormond is sued as a State Actor and individually. (R 34-36) A private person, including an attorney, acts "under color of state law when engaged in a conspiracy with state officials to deprive another of his federal rights. See Tower v. Glover, 467 U.S. 914, 920 (1984), citing Dennis v. Sparks, 449 U.S. 24, 27-28 (1980)

In addition, according to the Complaint, on pages 25,26 in paragraphs 108-110 (R 56-57) Respondents have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution, Respondents Quinn and Ormond jointly participates in constitutional wrongdoing with state official in "state action" which meets the requirement of § 1983, See Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984); citing Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 186-187, 66 L.Ed.2d 185 (1980).

Also, See the District Judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 11) *"..that some statements may have been made in the proceedings that mischaracterized or misrepresented Plaintiff's actions or positions..";* (R 176)

Lastly, See the district judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 12) *"They also suggest that Landlord and the SCDOT acted cooperatively in opposing Plaintiff's claims, consistent with their settlement agreement...".* [11] (R 177, 428 lines 9-25, 429 lines 1-25, 430 lines 1-16)

[11] The agreement to reach a predetermined outcome to enter the settlement as just compensation, with the goal of ruin Paul's cause of action, under The Takings Clause, against SCDOT based on the Highest and Best Use of his property as "Commercial Retail Property" appraised between 310,000.00 - 400,000.00 itself violated Paul's constitutional rights, independently of the subsequent state court decisions. See Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."); Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d at 159, 166 (3d Cir. 2010).

The Court erred, in ruling and concluding that Respondents Quinn, Ormond, and their law firms are not proper parties and dismissing them from the case, that should be reversed.

VI. The Court erred in dismissing the Complaint with prejudice and without an opportunity to replead or amend, in this post- Knick world.

In Respondents brief, in footnote 5 on page 17, incorrectly contended that the unpublished opinion of *Thomas v. Tennessee*, 451 F.Supp.3d (W.D. Tenn. 2020) "disposed of a similar issue raised in the case of *Thomas v. Tennessee*, 451 F.Supp.3d (W.D. Tenn. 2020)". This argument is incorrect because *Thomas* was all about billboard permits and removal of his billboards" a land-use regulations takings case is clearly distinguishable from Paul's physical takings case.[12] *Williamson County* Regional Planning Comm'n v. Hamilton Bank of Johnson City had two holdings and *Knick v. Township of Scott*, did not disturb *Williamson County* second holding, 139 S. Ct. at 2169—that "a takings claim challenging the application of land-use regulations [i]s 'not ripe until the government entity charged with implementing the regulations ha[s] reached a final decision regarding the application of the regulations to the property at issue,'" *Pakdel v. City & Cty. of San Francisco*, 952 F.3d 1157, 1163 (9th Cir. 2020) (quoting *Williamson*, 473 U.S. at 186). Regulations takings remains good law in *Williamson*. Moreover, because *Thomas* is an unpublished opinion, it has no precedential value, pursuant to Rule 220(a) SCACR. Even though this action is substantively brought under federal law, namely 42 U.S.C 1983 civil conspiracy, the procedural aspects of the case are

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[12] *Thomas* never satisfied the obligation to exhaust State remedies.....,and his complaint involved collateral attacks on final judgments.

governed by the South Carolina Appellate Court Rules _See, Norton v. Norfolk Southern Railway Co.,_ 350 S.C. 473, 567 S.E.2d 851, 853 (2002) (federal claim brought in state court "is controlled by federal substantive law and state procedural law") Therefore, SCACR 220(a), is applicable to this case.

In additionally, in Respondents brief on page 17 footnote 5 incorrectly contended in a short, conclusory statements made without supporting authority that "In addition to this issue not being preserved, it lacks all merit". South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review. See _Fields v. Melrose Ltd. Partnership,_ 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App. 1993)

Appellant respectfully renews his arguments; While this case was pending in the lower Circuit Court, " **still open on direct review** " on June 21, 2019 the United States Supreme Court's decided _Knick v. Township of Scott,_ 139 S. Ct. 2162 (2119), that overruled, in part, _Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City_, 473 U.S. 172 (1985) 34-year-old precedent that established a federal claim was not ripe until a state takings plaintiff exhausted its remedies under state law.[13]

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[13] The ABA Model Rules of Professional Conduct and South Carolina Appellate Court Rule 407 provides a clear requirement: Attorneys must cite directly adverse legal authority controlling in the court's jurisdiction. The duty applies even when the attorney on the other side fails to cite such authority. Labeled under the title "Candor Toward the Tribunal," Model Rule 3.3(a)(2) reads that "a lawyer shall not knowingly … fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. Also _See Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue,_ 358 S.C. 647,650,595 S.E.2d 890, 892 (Ct. App. 2004); _Riley v. Dorton_ 93 F.3d 113 (4th Cir. 1996)

In South Carolina, "[t]he general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively." _Carolina Chloride, Inc. v. S.C. Dep't of Transp._, 391 S.C. 429, 433, 706 S.E.2d 501, 503 (2011) (citation omitted). See Carolina Chloride, Inc., 391 S.C. at 433-34, 706 S.E.2d at 503 (finding judicial decision should be applied retroactively when it created no new right or cause of action; rather, it abandoned former test and restated the focus for what a landowner must prove to entitle him to damages in an inverse condemnation action. "Prospective application is required when liability is created where formerly none existed." Id. at 433–34, 706 S.E.2d at 503. "As a common rule, judicial decisions in civil cases are presumptively retroactive." _Miranda C. v. Nissan Motor Co._, 402 S.C. 577, 586, 741 S.E.2d 34, 39 (Ct.App.2013); _Lucero v. State_ 777 S.E.2d 409 (S.C. Ct. App. 2015) As a common rule, judicial decisions in civil cases are presumptively retroactive; *See* _Harper v. Va. Dep't of Taxation_, 509 U.S. 86, 95-96, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993) (discussing the "presumptively retroactive effect" of civil decisions); *see also* 20 Am.Jur.2d *Courts* § 150 (2013) ("[I]t is said that, unlike legislation, which is presumptively prospective in operation, judicial decisions are presumptively retrospective.").

In this instant case _**Knick**_ applied retroactively, therefore, the statute of limitations contained in S.C. Code section 15-3-530 (5), 15-3-530 (1) and 15-3-520(b)

begins from the day the United States Supreme Court issued the opinion, June 21, 2019.

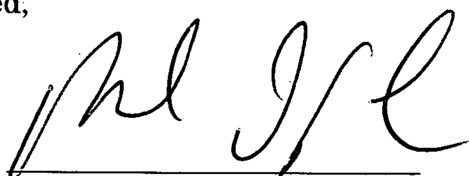
In this post- ***Knick*** world, the court erred in dismissing Appellant Complaint with prejudice and without an opportunity to replead or amend.

Lastly, the circuit court erred in effectively preventing Appellant from litigating a post-ruling motion to amend by immediately dismissing the claims "with prejudice." *Skydive Myrtle Beach, Inc. v. Horry Cnty*. 426 S.C. 175 (S.C. 2019) • 826 S.E.2d 585 (Decided Mar 13, 2019).

CONCLUSION

Appellant respectfully renews his request that this Court reverse the Orders issued by Circuit Court Judge Jocelyn Newman for the reasons stated and remand for further proceedings.

Respectfully submitted,



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January 19, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE JOCELYN NEWMAN
Circuit Court Judge
Fifth Judicial Circuit

Appellate Case No. 2019-002076
CASE NO: 2018-CP-400-5641

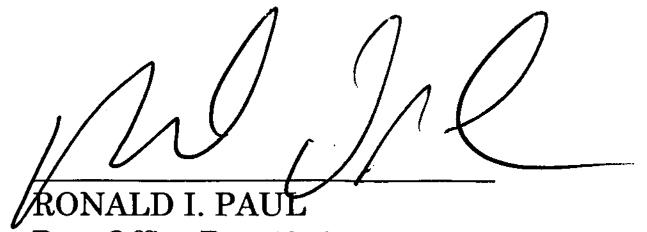
RONALD I. PAUL..Appellant,

V.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; PAUL D. DE HOLCZER, individually and as a partner of the law Firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; MACIE M. GRESHAM, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; NATALIE J. MOORE, in her individual capacity as assistant chief counsel South Carolina Department of Transportation........................ Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief and Final Reply Brief complies with Rule 211 (b), SCACR.



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE JOCELYN NEWMAN
Circuit Court Judge
Fifth Judicial Circuit

Appellate Case No. 2019-002076
CASE NO: 2018-CP-400-5641

RONALD I. PAUL..Appellant,

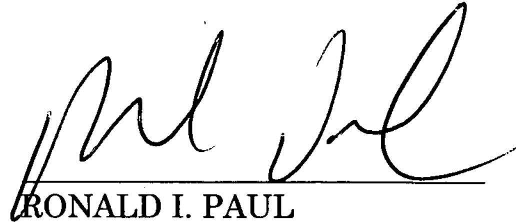
V.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; PAUL D. DE HOLCZER, individually and as a partner of the law Firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; MACIE M. GRESHAM, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; NATALIE J. MOORE, in her individual capacity as assistant chief counsel South Carolina Department of Transportation........................ Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned *Pro Se* Appellant certifies that the Final Brief of Appellant and the Final Reply Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and

Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.



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